479.

SUPREME COURT OF THE UNITED STATES.

No. ~~78~~ 38.

JOHN STRATTON, APPELLANT,

VERSUS

LEONARD JARVIS, AND C. H. H. BROWN, APPELLEES.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA, *District of Maryland,* } *to wit:*

Style of the circuit court

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first day of November, in the year of our Lord one thousand eight hundred and thirty-one:

Present:

The Hon. GABRIEL DUVALL, *one of the Associate Justices of the Supreme Court of the United States.*

ELIAS GLENN, *Judge of Maryland District.*
NATHANIEL WILLIAMS, Esq. *Attorney.*
THOMAS FINLEY, Esq. *Marshal.*
PHILIP MOORE, *Clerk.*

Among other, were the following proceedings, to wit:

Parties. THE CLAIMANTS OF SUNDRY GOOD AND MERCHANDISE — JOHN STRATTON. } *Appeal from the District Court.*

Be it remembered, that, heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and thirty-one; the said claimants of the said goods and merchandise, by Charles F. Mayer and William J. Ward, their attorneys, file in the circuit court here a record from the district court of the United States in and for the Maryland district, in the words, and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *District of Maryland,* } *to wit:*

Style of the district court

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in June, in the year of our Lord one thousand eight hundred and thirty-one:

Present:

The honorable ELIAS GLENN, *Judge of Maryland District.*
NATHANIEL WILLIAMS, Esq. *Attorney.*
THOMAS FINLEY, Esq. *Marshal.*
PHILIP MOORE, *Clerk.*

Among other, were the following proceedings, to wit:

Parties. JOHN STRATTON, *vs.* SUNDRY GOODS AND MERCHANDISE, } *Libel filed 17th March,* 1831.

To the honorable Elias Glenn, Judge of the United States for the District of Maryland:

The libel of John Stratton, master and owner of the sloop Liberty, of New York, for himself, and all others entitled, humbly showeth:

Libel. That, on Tuesday the fifteenth day of March, in the year eighteen hundred and thirty-one, at about eight o'clock in the morning, he went along side of the brig Spark, of Baltimore, then lying aground on the bar of Thomas's point, in the Chesapeake bay, and within the jurisdiction of this honorable court, about thirty-five miles below the said port of Baltimore; the said brig Spark at that time being in great danger of stranding, the wind blowing pretty fresh from the southeast, and a smart sea running; that two of the owners of the said brig Spark were on board of her at this time, and declared to this libellant and his crew, that it was their intention to relieve the said brig of so much of her [cargo] as was necessary to preserve her, the said vessel being in danger of stranding; and further declared that if your libellant would not take any part of said cargo on board the said sloop Liberty, that they would commence throwing it overboard, and were in the act at that

time of casting a bale of goods into the water, and had actually raised it on the gunwale of the Spark for that purpose; they further declared to this libellant that they would not make any contract with him for the freight of such goods as he might take to Baltimore, but that he might take so much of the cargo of the Spark as the Liberty was enabled to carry, and that he should be allowed therefor, in the nature of salvage, whatever the law would give; that, under these circumstances, with the view of preserving so much of the said cargo as was in his power, and which otherwise would have been thrown into the sea and utterly destroyed, and upon the understanding aforesaid, and none other, as to the compensation which he was to receive, this libellant and his crew commenced taking property from the Spark on board the Liberty, and succeeded in bringing in good safety to the port of Baltimore the following goods and merchandise, to wit, eighteen bales, eighty boxes, one seroon, and one bundle, which your libellant believes contain a large quantity of valuable dry goods, the precise character and value of which he has at present no means of ascertaining, with the exception of knowing that some of the boxes contain spermaceti candles, and some contain wine; and, also, that twelve whaffle irons are among the property saved.

Now, inasmuch as the said John Stratton hath, with much difficulty and danger, saved from the said brig Spark the articles aforesaid, which would otherwise, in all human probability, have been totally lost; may it please your honor to order the said articles being now in the city of Baltimore, to be attached and taken by the process of this honorable court, and that a monition issue to all persons concerned to show cause, if any they have, why a reasonable salvage should not be decreed thereout to the libellants and all others entitled, and that such further steps be taken as the course of this honorable court shall require.

J. GLENN, *for Libellant.*

THE UNITED STATES OF AMERICA, } *sct.*
District and State of Maryland, }

Deposition of John L. Smith.

Be it remembered, that, on this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and thirty-one, at the city of Baltimore, before me, John Hanan, a commissioner appointed by the circuit court of the United States for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," personally appeared John L. Smith, a witness for the libellant, in a certain civil cause now depending in the district court of the United States for the district of Maryland, wherein John Stratton is libellant, against sundry goods and merchandise. And the said witness, being by me first carefully examined and cautioned, and sworn to testify the whole truth, makes oath, deposeth, and saith, that he is part owner of the brig Spark; that, on Monday, the 14th of March last, this deponent was informed by Mr. Reese, a pilot, that the brig Spark was high and dry upon Thomas's point, and that he had

better proceed down and save her; that deponent, together with Mr. Bailey, another part owner, proceeded down in Captain Pulley's boat to her; that deponent got into Annapolis about eight o'clock at night with the intention of getting more vessels at Annapolis, having engaged two at Baltimore; deponent went on board of Captain Stratton, the libellant's sloop, at Annapolis, called the Liberty, and engaged to give libellant fifty dollars to go along side of the brig Spark, and take out a load of goods, and bring them to Baltimore. Captain Pulley's boat, and Captain Stratton's sloop, the Liberty, proceeded along side the brig Spark, where they arrived about nine o'clock on Tuesday morning; previous to getting along side the vessel, saw the men aloft sending down the topgallant rigging. Mr. Bailey asked deponent what the men were up aloft for; deponent observed the vessel must be bilged, and that they were about stripping her. After getting along side the Spark, Mr. Bailey first went on board, and directly after this deponent got on board, and learned from the mate of the Spark that she had bilged the night before. Deponent found that the Captain had left her the night before in a vessel he had employed to discharge her; and all the men had left, except two of the crew, the cook and the mate, one of whom was sick. The complement of the crew, including the officers, amounted to ten. The mate informed this deponent that he supposed the Captain had gone ashore, fearing that a gale would come on, and that the vessel would go to pieces. The Captain afterwards informed this deponent that he had gone with a view of protecting the goods which were in the boat that he had employed for discharging the cargo. That, when deponent got on board, there was a calm—the vessel lying perfectly easy: this deponent says the brig was lying upon her side, and apparently half full of water; that, when deponent got into the hold, he found there was about four feet water; and this deponent considered the vessel as lost. This deponent says they concluded at first to cut away the masts, and ordered Captain Stratton's sloop to shove out of the way: that afterwards they concluded not to cut down the masts, and ordered the sloop to come along side. Deponent then called Captain Pullen and Captain Stratton on board the Spark, and stated that it was sufficient for them to lose the vessel without implicating themselves in any debts; that they had abandoned the goods, but deponent had no doubt, if they would bring the goods to Baltimore, that the owners would compensate them, and this deponent believes that the compensation would be settled by arbitration, and deponent declared that the contract he had made with them was at an end, and deponent then considered both vessel and cargo lost; and such certainly would have been the case if a gale had come on. This deponent further states, that, when he made the contract with libellant and the others, he had no idea that the vessel and cargo were in so much danger as they proved to be when they got along side. That libellant, and the others, then proceeded to load their vessels under the new understanding, and proceeded with the goods to Baltimore. In discharging the vessel, such was her situation, that two or three cases were shipped out of the slings, but that no part of

the cargo was thrown overboard; but that some things belonging to the vessel, such as hencoops and spars, were thrown over board for the purpose of clearing the gangway, in order that the cargo might be discharged more easily. And this deponent declared that if these men did not take the goods, he would throw as many of them overboard as would be necessary to save the vessel.

Cross-examination.

Cross-examination.

That, whilst libellant was taking the goods on board his vessel from the Spark, it was pefectly calm, no sea running to endanger any thing, and they took the goods on board with perfect convenience. This deponent declared to Captain Stratton that, unless the goods were taken out, that he would be compelled to throw more or less of them overboard, in order to save the rest and the vessel, if she did not prove to be bilged. This deponent further says, that neither himself, Mr. Bailey, or any other person on board, to his knowledge, were in the act of throwing overboard a bale of goods at the time mentioned, but that this deponent was in the act of throwing over hen coops, and some other things, as mentioned in the direct examination. This deponent further states, that he abandoned the vessel and cargo, having given them both up for lost. This deponent states that libellant's vessel was along side receiving the cargo of the brig Spark from ten o'clock A. M., till two o'clock P. M. The brig Spark did not prove to be bilged. That the Captain of the Spark returned to his vessel about 10 o'clock that morning, and the Captain gave a note to libellant, directing him to deliver the goods to Mr. Brown, the consignee of the cargo, and that he would give them a fair compensation for their labor; that, when deponent went on board the Spark, they were not pumping, because the water was not up to the pumps, and there were not men enough on board to pump them effectively. This deponent thinks there were four or five vessels along side the Spark at the same time libellant was taking in the cargo: deponent does not think more than five minutes elapsed from the time he ordered libellant to shove off from the Spark, until he called him back again; that from the time they began to pump until they got her free, it occupied about three hours.

JOHN L. SMITH.

UNITED STATES OF AMERICA, } *sct.*
District and State of Maryland, }

Certificate of the commissioner.

I, John Hanan, a commissioner appointed by the circuit court of the United States for the district aforesaid, in the fourth circuit of the said United States, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that the reason for taking the deposition hereunto annexed, of John L. Smith, is, that said witness is about to proceed to sea. I do further certify that the

claimants were notified of the time and place of taking said deposition, and that Mr. Jarvis, Mr. Mummey, and Mr. Ellicott, attended, as also William H. Gatchell, esquire, counsel for libellant. I do further certify that I am not of counsel or attorney to either of the parties in said deposition mentioned, nor interested in the event thereof; that said deposition was reduced to writing by me, and thereafter subscribed by the said deponent in my presence.

In testimony whereof, I have hereunto set my hand and seal, this twenty-seventh day of April, one thousand eight hundred and thirty-one, at the city of Baltimore, in the State aforesaid.

JOHN HANAN, [SEAL.]
Commissioner.

Claim and answer.

The claim and answer of Leonard Jarvis, and Charles H. H. Brown, (trading under the style and firm of Jarvis and Brown,) to the libel filed by John Stratton, on behalf of himself and others, against 18 *bales*, 80 *boxes, one seroon and one bundle of merchandise, on behalf of the owners of said merchandise.*

These respondents, saving and reserving to themselves, and the owners and proprietors of the goods and merchandise aforesaid, all benefit of exception to the libel filed in this cause, answer and say, that the brig Spark, mentioned in the libel, sailed from the port of New York, on the seventh day of March last, bound to the port of Baltimore, and proceeded on her said voyage in safety, until Friday, the eleventh of March aforesaid, when, being in the Chesapeake bay, and having a pilot on board, the said brig struck on Thomas's point at about half past eight o'clock P. M. That, between the time of said brig's running aground, and the coming on board by the libellant as mentioned in his said libel, a considerable part of the cargo had been taken out of said brig by lighters. That John L. Smith, one of the owners of said brig, but not interested in the cargo, on hearing of the accident, went down to said brig from Baltimore, together with Thomas Bailey, the other part owner, and also proceeded to Annapolis to obtain one or more vessels to assist two others previously engaged by him to take the cargo out of the said brig; and that, while at Annapolis, he engaged the libellant to go along side the said brig with his sloop called the Liberty, and take out a load of goods and bring them to Baltimore; which said libellant agreed to do for the sum of fifty dollars, which was promised him by the said Smith.

And these respondents, further answering, say, that in pursuance of the agreement made between said Smith and the libellant, the latter proceeded with his said sloop along side the brig Spark, but these respondents positively deny that the owners then on board said brig, or her commander, or any of her crew, were in the act of casting overboard any part of her cargo, or intended doing so, but in a case of the last extremity. That, at the time libellant came along side as aforesaid, it was perfectly calm, and

no sea was running to endanger any thing: that libellant, with perfect convenience, took on board his vessel the goods and merchandise mentioned in his said libel, and, as no circumstances existed to compel such a measure, the master of the Spark could not abandon the goods and cargo of the said brig, as they did not belong to him, but divers merchants in Baltimore and elsewhere.

And these respondents, further answering, say, that shortly after the removal of said goods and merchandise from said brig, she was gotten off from the place where she struck, with little or no injury, and safely arrived at the port of Baltimore aforesaid. That Leonard Jarvis, one of these respondents, on behalf of the President and Directors and Company of the Atlantic, the American, and the Neptune Insurance Offices, of the city of New York, by whom a great part of the said cargo of the aforementioned brig Spark had been insured, as well as on behalf of the owners of said cargo, offered to libellant, upon his arrival at the port of Baltimore with the goods and merchandise mentioned in said libel, the aforesaid sum of fifty dollars, which had been promised to libellant by said Smith, but libellant refused to receive the same, and demanded a much larger sum, and these respondents, denying that said libellant has any claim for salvage, and being still willing to pay to him the fifty dollars for which he had agreed to perform the said service, herewith bring the same with interest, and the costs to this time accrued, into court, to be applied to the payment of the said libellant according to his agreement as above stated.

Your respondents therefore pray, that said libel may be dismissed with costs, and they, as in duty bound, will ever pray, &c.

SAMUEL J. DONALDSON,
WM. J. WARD,
For Respondents.

STATE OF MARYLAND, *City of Baltimore*, } *sct.*

On this eight day of June, Anno Domini 1831, personally appeared before the subscriber, a justice of the peace in and for the said city, Leonard Jarvis, one of the partners above named, and made oath that the aforegoing statements are true to the best of his knowledge and belief.

Sworn before
FER'D. GOURDON.

In the matter of the claim of John Stratton for salvage upon the goods of the brig Spark of New York.

UNITED STATES OF AMERICA, *State of New York, County of Kings.* }

Deposition of John M. Breese.

John M. Breese, of the village of Brooklyn, county of Kings, and State of New York, mariner, being duly sworn, deposeth and saith, that on or about the seventeenth day of March last, the sloop Liberty, of Brooklyn, Long Island, commanded by Captain John

Stratton, was brought into the port of Baltimore, in the State of Maryland, and fastened to Smith's wharf, in the said city. That the said sloop was loaded with goods taken from the brig Spark, of New York, which had, a short time previous, been wrecked in Chesapeake bay. That, on the day succeeding the day above mentioned, Mr. William Robinson, a custom-house officer of the port of Baltimore, came on board, and took charge of said sloop, and, in presence of this deponent, locked the hatches, and retained the key which locked the same. That, on the succeeding day, and after the said sloop was taken in charge by the said custom-house officer, Mr. Brown, of Baltimore aforesaid, (reputed the consignee of the cargo of the said brig Spark,) came on board the said sloop Liberty, lying as aforesaid at Smith's wharf, and in the presence of this deponent, Captain Stratton, George Munroe and others, attempted to force open the said hatches. That, while so doing the said Stratton frequently ordered the said Brown to desist from such attempts, which orders the said Brown totally disregarded, and, continuing in his endeavor to force the said hatches, finally succeeding in opening the same. And this deponent further says, that the next morning (after the hatches were forcibly opened by the said Brown,) Mr. Robinson, the said custom-house officer, came on board the said sloop Liberty, and caused the same to be unloaded under his (Robinson's) directions and superintendence. That he, this deponent, assisted in thus unloading the said vessel; and, while so assisting, Mr. Jarvis, of Baltimore aforesaid, told this deponent that he (Jarvis) had eight boxes of dry goods on board the said brig Spark, which boxes in New York cost him fifteen thousand dollars. That while unloading as aforesaid, said Jarvis recognized and designated the boxes, and stated to this deponent that he was much pleased that he had received the whole number of boxes, and expressed much satisfaction on finding that they had sustained only slight damage.

JOHN M. BREESE.

Sworn before me, this 27th day of August, 1831.

HENRY L. CLARKE,
Notary Public, State of New York.

UNITED STATES OF AMERICA,
State of New York, County of Kings, } *ss.*

Be it known, that, on the twenty-seventh day of August, one thousand eight hundred and thirty-one, before me, Henry L. Clarke, a public notary, in and for the State of New York, duly commissioned and sworn, dwelling at the village of Brooklyn, in said county of Kings, personally came John M. Breese, to me personally known, and the said John M. Breese in my presence read and subscribed the preceding affidavit, and, being by me sworn upon the Holy Evangelists of Almighty God, did depose and say that the facts set forth in the said affidavit were true of his own knowledge.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written. [SEAL.]

HENRY L. CLARKE,
Notary Public, State of New York.

In the matter of the claim of John Stratton for Salvage upon the Goods of the brig Spark of New York.

UNITED STATES OF AMERICA,
State of New York, County of Kings, } *ss.*

Deposition of George Munrow.

George Monrow, of the city of Philadelphia, mariner, being duly sworn, deposeth and saith, that, on or about the seventeenth day of March last, the sloop Liberty, of Brooklyn, Long Island, commanded by Captain Stratton, was brought into the port of Baltimore, in the State of Maryland, and fastened to Smith's wharf, in the said city. That the said sloop was loaded with goods taken from the brig Spark, of New York, which had, a short time previous, been wrecked in the Chesapeake bay. That, on the day succeeding the day above mentioned, Mr. William Robinson, a custom-house officer of the port of Baltimore, came on board, and took charge of the said sloop, and, in the presence of this deponent, locked the hatches, and retained the key which locked the same. That, on the succeeding day, and after the said sloop was taken in charge by the said custom-house officer, Mr. Brown, of Baltimore aforesaid (reputed) the consignee of the cargo of the said brig Spark, came on board the said sloop Liberty, lying as aforesaid at Smith's wharf, and, in the presence of this deponent, Captain Stratton, John M. Breese, and others, attempted to force open the said hatches. That, while so doing, the said Stratton frequently ordered the said Brown to desist from such attempts, which orders the said Brown totally disregarded, and, continuing in his endeavor to force the said hatches, finally succeeded in opening the same.

GEORGE MONROW.

Sworn before me, this 29th day of August, 1831.

HENRY L. CLARKE,
Notary Public, State of New York.

UNITED STATES OF AMERICA,
State of New York, County of Kings, } *ss.*

Be it known, that, on the twenty-ninth day of August, one thousand eight hundred and thirty-one, before me, Henry L. Clarke, a public notary in and for the State of New York, duly commissioned and sworn, dwelling at the village of Brooklyn, in said county of Kings, personally came George Monrow, to me personally known, and the said George Monrow, in my presence, read and subscribed the within affidavit, and, being by me sworn

upon the Holy Evangelists of Almighty God, did depose and say that the facts set forth in the said affidavit were true of his own knowledge.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year last above written. [SEAL.]

HENRY L. CLARKE,
Notary Public, State of New York.

JOHN STRATTON, *vs.* SUNDRY GOODS AND MERCHANDISE, } *In the District Court U. S. for the District of Maryland.*

Decree of the district court.

This cause standing ready for hearing, the libel, answer, exhibits, and proofs being duly read, heard, and considered, it is thereupon, this eighth day of June, in the year of our Lord eighteen hundred and thirty-one, by Elias Glenn, district judge, and by the authority of this court, adjudged, ordered, and decreed, that the goods and merchandise mentioned in said libel, and every part thereof, be, and the same is hereby, condemned pursuant to to the prayer of the said libel, and that the same be sold by the marshal of this court in the usual way, and that the said marshal pay the moneys arising therefrom to the clerk of this court. And is further ordered, adjudged, and decreed by this court, that one-fifth of gross amount of sales of said goods and merchandise be paid to the libellant in this cause, or to his proctor, by way of salvage. And it is further ordered and decreed that the residue of said sales, after deducting all costs, charges, and expenses, be paid to the claimants or their respective proctors.

ELIAS GLENN,
District Judge.

(Filed 21st October, 1831.)

Appeal.

From which said decree, so as aforesaid rendered, the claimants aforesaid, by their attorneys aforesaid, prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first day of November next; and to them it is granted. Thereupon, it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are transmitted accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name, and affix the seal of the said district court, this twenty-first day of October, in the year of our Lord one thousand eight hundred and thirty-one. [SEAL.]

PHILIP MOORE,
Clerk District Court.

Schedule of Merchandise taken from on board the brig Spark, by the sloop Liberty, and libelled for salvage in the District Court of the United States for Maryland District, June term, 1831.

Owners.	Consignees.	Amount of goods saved.	Amount of salvage.
Patterson & Duncan -	Joseph Taylor & Son -	$493 12	$98 62
J. B. Danforth -	Same - - -	357 82	71 56
Chamberlin & Caldwell -	Same - - -	400	80
Wm. B. Keys & Co. -	John T. Barr - -	1471 65	294 33
Baltzell & Davidson -	B. & Davidson - -	757 42	151 48
Mummey & Meredith -	M. & M. - -	361 60	72 32
John Armstrong & Son -	C. F. Pochon & Co. -	238	47 60
Wm. M. Ellicott & Co. -	Wm. M. E. & Co. -	862 36	172 47
Sackett & Shannon -	S. & S. - -	501 60	100 32
Baltzell & Dalrymple -	B. & D. - -	2,000	400
Peabody, Riggs & Co. -	P., R. & Co. - -	409 50	81 90
Bancroft & Peck -	B. & P. - -	360 19	72 04
Lawrence & Anderson -	Erskine, Eichelberger & Co	424 85	84 97
S. & J. B. Ford - -	H. & W. Crawford -	473	94 60
Jarvis & Brown -	J. & B. - -	4,530 84	906 17
		$13,641 95	2,728 38

List of Owners and Consignees.

Owners.	Consignees.
	Joseph Taylor & Son
	do.
Patterson & Duncan	do.
	do.
	do.
J. B. Danforth	do.
Chamberlin & Caldwell	do.
Wm. B. Keys & Co.	John T. Barr
Baltzell & Davidson	B. & Davidson
Mummey & Meredith	M. & Meredith
John Armstrong & Son	C. F. Pochon & Co.
Wm. M. Ellicott & Co.	Ellicott & Co.
Sacket & Shannon	S. & Shannon
Baltzell & Dalrymple	B. & D.
	N. F. Williams
Peabody, Riggs & Co.	P. R. & Co.
Bancroft & Peck	B. & Peck
Lawrence & Anderson	E., Eichelberger & Co.
	Talbot Jones & Co.
S. & J. B. Ford	H. & W. Crawford
Jarvis & Brown	J. & B.
	Morrison & Egerton